IN THE HIGH COURT OF BOMBAY AT GOA

CIVIL APPLICATION (REVIEW) NO. 7 OF 2007.
IN CIVIL REVISION APPLICATION NO. 139/01.

1. Mr. Masood Ali Ahmed Ali,
   major, married, businessman,
   residing at Dias Building,
   2nd Floor, New Vaddem,
   Vasco da Gama.
2. Mr. Hussain Gazi Zainul Abedin,
   major, married, businessman,
   presently residing at 84-D/1,
   Layamaty, Davarlim,
   Margao, Goa.
3. Mr. Mohammad Badruduza
   Maulana Jamaluddin,
   major, married, businessman,
   residing at Sada, Madrasa
   Moinul-Quran, Opp. Govt.
   Football Ground, Vasco-da-Gama,
   Goa. .... Applicants.

Versus

Mr. Shaik Hussain Shaik Musa,
Major, married, businessman,
Mutawalli, Madina Masjid,
residing at Sultan Lodge,
Swatantra Path,
Vasco-da-Gama, Goa. .... Respondent.

Mr. S.D. Lotlikar, Senior Advocate with Mr. M. D'Souza, Advocate for the Applicants.

Ms. Amir Razaq, Advocate for the Respondent.

CORAM: S. A. BOBDE , J.

DATE: 27th APRIL, 2007.

ORAL JUDGMENT:

The question before this Court in the Civil Revision

Application was whether a suit would lie before a Civil Court even though Section 85 of the Wakf Act, 1995 bars such suits. Section 85 reads as follows :-

> **" 85. Bar of Jurisdiction of civil courts. -** No suit or other legal proceeding shall be in any civil court in respect of any dispute, question or other matter relating to any wakf, wakf property or other matter which is required by or under this Act to be determined by a Tribunal. "

2. The argument on behalf of the applicants is that since the forum for the remedy provided under the Act namely a Tribunal has not yet been established, suits would continue to lie before a Civil Court as before. According to the applicants, this submission has not been answered by this Court by the judgment under review. A perusal of the Judgment of this Court shows that in paragraph 7, this Court framed the question as follows :-

> " Whether the suit would lie in the absence of establishment of a Tribunal as contemplated under the said Act. "

3. Thereafter this Court set out the principles stated by the

Supreme Court of India in ***Church of North India v. Lavajibhai Ratanjibhai and ors.*** **(2005) 10 SCC 760**. After reproducing the principles laid down by the Supreme Court, this Court observed as follows :-

> " In my considered view, this would aptly apply to the present situation at hand, especially when there is an express bar on jurisdiction of the civil Court on examination of the scheme of the particular Act to find out the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the civil Court. ..... "

4. It is clear that the Court observed that even if an alternate remedy may not be adequate or sufficient, it would not lift the bar by the Act and confer jurisdiction on the Civil Court. In other words, consideration of the remedy including its sufficiency and adequacy are not relevant. From the conclusion arrived at, it appears even the existence of the Tribunal was not relevant in view of the bar.

5. Hence there is no reason to review the Judgment. Review Application is dismissed. Civil Application No.25/07 accordingly stands

disposed of.

S. A. BOBDE, J.

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